

**ASSEMBLY BILL**

**No. 2440**

---

**Introduced by Assembly Member Gatto**

February 19, 2016

---

An act to amend Section 1524 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2440, as introduced, Gatto. Search warrants.

Existing law provides that a search warrant may only be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. Existing law also states the grounds upon which a search warrant may be issued.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1524 of the Penal Code is amended to
- 2 read:
- 3 1524. (a) A search warrant may be issued upon any of the
- 4 following grounds:
- 5 (1) When the property was stolen or embezzled.
- 6 (2) When the property or things were used as the means of
- 7 committing a felony.

1 (3) When the property or things are in the possession of ~~any~~ a  
2 person with the intent to use them as a means of committing a  
3 public offense, or in the possession of another to whom he or she  
4 may have delivered them for the purpose of concealing them or  
5 preventing them from being discovered.

6 (4) When the property or things to be seized consist of an item  
7 or constitute evidence that tends to show a felony has been  
8 committed, or tends to show that a particular person has committed  
9 a felony.

10 (5) When the property or things to be seized consist of evidence  
11 that tends to show that sexual exploitation of a child, in violation  
12 of Section 311.3, or possession of matter depicting sexual conduct  
13 of a person under 18 years of age, in violation of Section 311.11,  
14 has occurred or is occurring.

15 (6) When there is a warrant to arrest a person.

16 (7) When a provider of electronic communication service or  
17 remote computing service has records or evidence, as specified in  
18 Section 1524.3, showing that property was stolen or embezzled  
19 constituting a misdemeanor, or that property or things are in the  
20 possession of ~~any~~ a person with the intent to use them as a means  
21 of committing a misdemeanor public offense, or in the possession  
22 of another to whom he or she may have delivered them for the  
23 purpose of concealing them or preventing their discovery.

24 (8) When the property or things to be seized include an item or  
25 evidence that tends to show a violation of Section 3700.5 of the  
26 Labor Code, or tends to show that a particular person has violated  
27 Section 3700.5 of the Labor Code.

28 (9) When the property or things to be seized include a firearm  
29 or other deadly weapon at the scene of, or at the premises occupied  
30 or under the control of the person arrested in connection with, a  
31 domestic violence incident involving a threat to human life or a  
32 physical assault as provided in Section 18250. This section does  
33 not affect warrantless seizures otherwise authorized by Section  
34 18250.

35 (10) When the property or things to be seized include a firearm  
36 or other deadly weapon that is owned by, or in the possession of,  
37 or in the custody or control of, a person described in subdivision  
38 (a) of Section 8102 of the Welfare and Institutions Code.

39 (11) When the property or things to be seized include a firearm  
40 that is owned by, or in the possession of, or in the custody or

control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person

1 against whom a gun violence restraining order has been issued,  
2 the person has been lawfully served with that order, and the person  
3 has failed to relinquish the firearm as required by law.

4 (15) When the property or things to be seized are controlled  
5 substances or a device, contrivance, instrument, or paraphernalia  
6 used for unlawfully using or administering a controlled substance  
7 pursuant to the authority described in Section 11472 of the Health  
8 and Safety Code.

9 (16) (A) When all of the following apply:

10 (i) A sample of the blood of a person constitutes evidence that  
11 tends to show a violation of subdivision (b), (c), (d), (e), or (f) of  
12 Section 655 of the Harbors and Navigation Code.

13 (ii) The person from whom the sample is being sought has  
14 refused an officer's request to submit to, or has failed to complete,  
15 a blood test as required by Section 655.1 of the Harbors and  
16 Navigation Code.

17 (iii) The sample will be drawn from the person in a reasonable,  
18 medically approved manner.

19 (B) This paragraph is not intended to abrogate a court's mandate  
20 to determine the propriety of the issuance of a search warrant on  
21 a case-by-case basis.

22 (b) The property, things, person, or persons described in  
23 subdivision (a) may be taken on the warrant from any place, or  
24 from any person in whose possession the property or things may  
25 be.

26 (c) Notwithstanding subdivision (a) or (b), no search warrant  
27 shall issue for any documentary evidence in the possession or  
28 under the control of ~~any~~ a person who is a lawyer as defined in  
29 Section 950 of the Evidence Code, a physician as defined in Section  
30 990 of the Evidence Code, a psychotherapist as defined in Section  
31 1010 of the Evidence Code, or a member of the clergy as defined  
32 in Section 1030 of the Evidence Code, and who is not reasonably  
33 suspected of engaging or having engaged in criminal activity  
34 related to the documentary evidence for which a warrant is  
35 requested unless the following procedure has been complied with:

36 (1) At the time of the issuance of the warrant, the court shall  
37 appoint a special master in accordance with subdivision (d) to  
38 accompany the person who will serve the warrant. Upon service  
39 of the warrant, the special master shall inform the party served of  
40 the specific items being sought and that the party shall have the

1 opportunity to provide the items requested. If the party, in the  
2 judgment of the special master, fails to provide the items requested,  
3 the special master shall conduct a search for the items in the areas  
4 indicated in the search warrant.

5 (2) (A) If the party who has been served states that an item or  
6 items should not be disclosed, they shall be sealed by the special  
7 master and taken to court for a hearing.

8 (B) At the hearing, the party searched shall be entitled to raise  
9 any issues that may be raised pursuant to Section 1538.5 as well  
10 as a claim that the item or items are privileged, as provided by  
11 law. The hearing shall be held in the superior court. The court shall  
12 provide sufficient time for the parties to obtain counsel and make  
13 motions or present evidence. The hearing shall be held within three  
14 days of the service of the warrant unless the court makes a finding  
15 that the expedited hearing is impracticable. In that case, the matter  
16 shall be heard at the earliest possible time.

17 (C) If an item or items are taken to court for a hearing, any  
18 limitations of time prescribed in Chapter 2 (commencing with  
19 Section 799) of Title 3 of Part 2 shall be tolled from the time of  
20 the seizure until the final conclusion of the hearing, including any  
21 associated writ or appellate proceedings.

22 (3) The warrant shall, whenever practicable, be served during  
23 normal business hours. In addition, the warrant shall be served  
24 upon a party who appears to have possession or control of the  
25 items sought. If, after reasonable efforts, the party serving the  
26 warrant is unable to locate the person, the special master shall seal  
27 and return to the court, for determination by the court, any item  
28 that appears to be privileged as provided by law.

29 (d) (1) As used in this section, a “special master” is an attorney  
30 who is a member in good standing of the California State Bar and  
31 who has been selected from a list of qualified attorneys that is  
32 maintained by the State Bar particularly for the purposes of  
33 conducting the searches described in this section. These attorneys  
34 shall serve without compensation. A special master shall be  
35 considered a public employee, and the governmental entity that  
36 caused the search warrant to be issued shall be considered the  
37 employer of the special master and the applicable public entity,  
38 for purposes of Division 3.6 (commencing with Section 810) of  
39 Title 1 of the Government Code, relating to claims and actions  
40 against public entities and public employees. In selecting the

1 special master, the court shall make every reasonable effort to  
2 ensure that the person selected has no relationship with any of the  
3 parties involved in the pending matter. Information obtained by  
4 the special master shall be confidential and may not be divulged  
5 except in direct response to inquiry by the court.

6 (2) In any case in which the magistrate determines that, after  
7 reasonable efforts have been made to obtain a special master, a  
8 special master is not available and would not be available within  
9 a reasonable period of time, the magistrate may direct the party  
10 seeking the order to conduct the search in the manner described  
11 in this section in lieu of the special master.

12 (e) Any search conducted pursuant to this section by a special  
13 master may be conducted in a manner that permits the party serving  
14 the warrant or his or her designee to accompany the special master  
15 as he or she conducts his or her search. However, that party or his  
16 or her designee may not participate in the search nor shall he or  
17 she examine any of the items being searched by the special master  
18 except upon agreement of the party upon whom the warrant has  
19 been served.

20 (f) As used in this section, “documentary evidence” includes,  
21 but is not limited to, writings, documents, blueprints, drawings,  
22 photographs, computer printouts, microfilms, X-rays, files,  
23 diagrams, ledgers, books, tapes, audio and video recordings, films,  
24 and papers of any type or description.

25 (g) No warrant shall issue for any item or items described in  
26 Section 1070 of the Evidence Code.

27 (h) Notwithstanding any other law, no claim of attorney work  
28 product as described in Chapter 4 (commencing with Section  
29 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall  
30 be sustained where there is probable cause to believe that the  
31 lawyer is engaging or has engaged in criminal activity related to  
32 the documentary evidence for which a warrant is requested unless  
33 it is established at the hearing with respect to the documentary  
34 evidence seized under the warrant that the services of the lawyer  
35 were not sought or obtained to enable or aid anyone to commit or  
36 plan to commit a crime or a fraud.

37 (i) Nothing in this section is intended to limit an attorney’s  
38 ability to request an in-camera hearing pursuant to the holding of  
39 the Supreme Court of California in *People v. Superior Court (Laff)*  
40 (2001) 25 Cal.4th 703.

1 (j) In addition to any other circumstance permitting a magistrate  
2 to issue a warrant for a person or property in another county, when  
3 the property or things to be seized consist of any item or constitute  
4 evidence that tends to show a violation of Section 530.5, the  
5 magistrate may issue a warrant to search a person or property  
6 located in another county if the person whose identifying  
7 information was taken or used resides in the same county as the  
8 issuing court.

9 (k) This section shall not be construed to create a cause of action  
10 against any foreign or California corporation, its officers,  
11 employees, agents, or other specified persons for providing location  
12 information.